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IN THE

Supreme Court of the United States

October Term, 1959

No. 638

GERMANA E. PRAIDO DEL CASTILLO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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IN THE

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October Term, 1959

No.

GERMANA E. PRAIDO DEL CASTILLO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Ninth Circuit entered upon November 19, 1959, affirming the decree of the District Court of the United States for the District of Arizona rendered upon December 12, 1958.

Opinion Below

The opinion of the District Court of the United States was not reported.

The opinion of the United States Court of Appeals entered upon November 19, 1959, is printed in an appendix to this petition, for the convenience of this Court.

Basis Of Jurisdiction

The judgments of the Court of Appeals for the Ninth Circuit were made and entered, as stated, on November 19, 1959. Application for stay of mandate pending application in this Court for writ of certiorari was made December 8, 1959, and an order staying the mandate for thirty days to January 11, 1960, was entered December 9, 1959.

Questions Presented

The questions presented here for determination are vastly important, but may be briefly stated:

1. Petitioner seeks to recover benefits of gratuitous life insurance on serviceman killed in World War II. The United States Armed Forces failed to notify death of insured at all. Petitioner had no knowledge of serviceman's death until after liberation of concentration camps and of Philippines when comrades of insured returned home in 1947, and executed affidavits telling of death of insured in battle of Bataan on April 3, 1942. Congress, mindful of condition of Philippines and handicaps confronting beneficiaries, extended by amendment the time for filing claims with Veterans' Administration to seven years in 1948.

Quare, whether by the amendment Congress has given Petitioner a cause of action, on filing within seven years, within the provisions of 38 U.S.C. §784 (formerly 38 U.S.C. §445, §817), upon a "disagreement," or curtailed her rights to redress in court?

2. Petitioner was resident of the Philippines during the hostilities and Japanese occupation. On liberation of Philippines, and until survivors of Death March of Bataan straggled back home, Petitioner could not file her claim for benefits with Veterans' Administration for absence of proof or information of death of insured; she could not

bring suit, since the law required as condition precedent filing of her claim with Veterans' Administration and be finally denied.

Quare, whether hostilities and Japanese occupation of Philippines constitute a condition as creating "disability" within the law provided?

Quare, whether Petitioner's cause of action accrued for purposes of the statute of limitations provided by the law involved when Petitioner learned of death of insured?

Statutes And Regulations Involved

38 U.S.C. §784 (formerly 38 U.S.C. §445, §817);

National Service Life Insurance Act of 1940, c.757, §602 (d) (3) (B), 54 Stat. 1014, as amended by Act July 11, 1942, c.504, §1, 56 Stat. 657 (formerly 38 U.S.C. §802 (d) (3) (B)

National Service Life Insurance Act of 1940, c.757, §602 (d) (5), as amended 54 Stat. 1014 (formerly 38 U.S.C. §802 (d) (5);

Senate Report No. 902, 1948 U.S. Code Cong. Serv. 1121

The pertinent portions of the statutes and the report involved are set out in the notes in the Appendix, infra.

The original paging of the decision of the U.S. Court of Appeals for the Ninth Circuit is retained in the Appendix to avoid confusion.

Statement

We adopt the following statement from the opinion of the United States Court of Appeals, Ninth Circuit:

"Appellant filed a claim with the Veterans' Administration on June 11, 1948 claiming to be the beneficiary of gratuitous life insurance deemed to have issued pursuant to the National Service Life Insurance Act of 1940 to a serviceman killed in action in the Philipupines on April 3, 1942. Appellant's claim

is based upon her contention that she was the last person to stand in loco parentis to the deceased serviceman. She was first notified that her claim had been denied on July 31, 1956. The reason given was that she did not fall within the restricted class of beneficiaries of National Service Life Insurance. Appellant appealed to the Administrator of Veterans' Affairs on June 18, 1957, which appeal was dismissed without consideration on January 8, 1958. On February 24, 1958 appellant filed suit in the district court. That court dismissed the action on the grounds that it was without jurisdiction because the six year period of limitations on actions on National Service Life Insurance claims had expired before the claim was filed with the Veterans' Administration.

"The provision of the National Service Insurance Act under which appellant made her claims limits the time within which such claims may be made before the Veterans' Administration to seven years from the date the insured serviceman dies . . . . The purpose of Congress in extending the time for filing claims was to assist persons in the position of appellant who had been residents of the Philippines during World War II and thus prevented from filing claims for National Service Life Insurance payments because of the Japanese occupation of the island."

We add the following pertinent facts from the record to make clear the situation:

The United States Armed Forces in the Far East failed to notify Petitioner or any nearest kin of serviceman's death or whereabouts, and Petitioner had no information concerning insured's death until liberation and serviceman's comrades returned home early in 1947 and gave their information in affidavits con-

cerning serviceman's death in action on April 3, 1942. By these affidavits of 1947 serving as proof of serviceman's death, Petitioner filed her claims with the Veterans' Administration in 1948.

Reasons For Granting The Writ

This case raises questions of vital interest to the nation, involving the stamina of its fighting men at critical situations and crucial times and is of particular importance to veterans and to the welfare of their families which has been the concern of Congress. At a time when the nation's defenses in global warfare shall involve recruiting peoples across the seas to the armed forces to fight the battles of this country, the questions for the consideration of the Court here have far-reaching consequences.

1. It appears that the court below has decided an important question of federal law concerning a Congressional amendment to the National Service Life Insurance Act which has not yet been settled by this Court. The United States Court of Appeals, in holding that amendment extending the filing of claims with the Veterans' Administration to seven years is not "coextensive" of the six year limitations, seems to have introduced a principle never dealt with by any other Circuit Courts nor by this Court. Besides this, the manner in arriving at its opinion, and the holding itself, are speculative. We feel that the Court below should have met the question raised by the theory advanced by Petitioner within the framework of the provisions of the statute involved. (38 U.S.C. §784).

The lower court obviously may have overlooked that, with the time limitation of six years for bringing suits in the district courts on such claims remaining constant, notwithstanding, the time limit of filing a claim with the Veterans' Administration, whether it be one year, five

years in 1944, or seven years in 1948, one common denominator which shall give the appellant the right of action to redress in court is the existence of a "disagreement" between the claimant petitioner and the Veterans' Administration. In extending the time for filing claims with the Veterans' Administration from one year, then to five years, and then to seven years, Congress did so without any intention of limiting the recourse of a claimant to the ruling of the Veterans' Administration, but did so, by the pattern of its extensions, with the idea that on the event of a "disagreement" with the Veterans' Administration, the claimant may redress in court. Such filing and denial by the administrative agency is a condition precedent warranting Petitioner in bringing action in court. Specifically, Congress provided that Petitioner may bring action for this type of insurance benefits under 38 U.S.C. §817 which provides that suit may be brought upon a claim subject to the same conditions as are applicable to United States Government Life insurance under provisions of 38 U.S.C. 445 (both sections now 38 U.S.C. §784). It is apparent by the provisions made by Congress to give, by the said amendment, a cause of action to Petitioner when she filed with the Veterans' Administration within seven years.

That the seven years happened to be one year longer than the six year period for bringing a suit has nothing, we believe, to do with any question of its being "coextensive," or not, of the statutory limitation to suits in court, any more than a one year or a five year period for filing claims with the administrative agency would necessarily raise the question of the "shortening" of the six year period of statutory limitation. The United States Court of Appeals in adopting such a view did so out of the framework of the provisions of the governing statutes, and that the holding is entirely speculative.

Settlement of the questions raised by the Congressional amendment is plainly of vital interest to veterans and their families, and necessarily should be adjudicated squarely by this Court to avoid confusion, and to ascertain the intention of Congress to do social justice.

2. Aside from its novelty, the question presented has been decided by the lower court in a manner which has so far departed from the accepted and usual course of judicial procedure. The lower court has apparently adopted the view, as evidenced by its reference to a language of this Court in Soriano v. United States, 352 U.S 270 (1957) in support of its opinion, that the construction of the provisions of 62 Stat. 976, 28 U.S.C. §2501, in the Soriano case, shall be equally applicable in construing 38 U.S.C. §784 (formerly 38 U.S.C. §445, §817) which provides for pursuing a claim in court for National Service Life Insurance benefits such as Petitioner's.

The lower court has overlooked the fact that the Soriano case (involving claims for requisition by Philippine guerrillas of provisions and equipment) is vastly different from the case at bar, and is governed by a statutory provision quite different from that controlling gratuitous automatic insurance benefits. Moreover, the attitude of this Court, in its decisions, as to the construction of the statute under which the Soriano case and cases of similar category had been brought; in which it adhered to strict construction, is expressly different where the construction involved the provisions of the statute governing claims such as Petitioner's and similar cases.

The lower court, having stated the point of Petitioner's contention "that her residence in the Philippines during the hostilities and Japanese occupation of the islands in World War II was a legal disability," should have, we feel, by all reasonable logic, met and resolved that point squarely

with the language of this Court applicable to the point. Instead, in applying the language of this Court from the Soriano case, supra, at p. 276, the lower court has omitted the portion that squarely applies to the question of "legal disability" of Petitioner's.

This Court, actually, in dealing with this question said:

> "Furthermore, even if hostilities prevented petitioner from filing his claim and **this condition could be regarded as creating a 'disability,'** the claim would nonetheless be barred by the express terms of this statute because not filed within three years after the cessation of hostilities, to wit, before September 2, 1948." (at page 276) (Bold supplied).

This view is obviously a concession conforming to the decision of the Court of Claims to which this Court made reference in the Soriano v. United States, supra, saying:

> "After issuance of the writ in this case, the Court of Claims in Compania Maritima v. United States, ... 145 F Supp 935 (1956), held that a Philippine resident seeking redress against the United States was under a legal disability while hostilities between Japan and the United States continued. The court further held that claim of such a person must be filed within three years 'after the disability ceases,' i.e. by September 2, 1948. . . ." (at p. 272).

If the decision of the lower court is permitted to stand, it shall import into National Service Life insurance law an unwarranted dissent and a holding which could not be countenanced by the expressed opinions of this Court.

3. The United States Court of Appeals, in affirming the judgment of the United States District Court dismissing

Petitioner's action on the ground that the six year period of limitations of actions on National Service Life Insurance claims have expired before the commencement of the action, in effect has decided that the beneficiary's right to recover the benefits of automatic gratuitous insurance had expired before she would have been warranted to file a lawsuit to enforce that right. Petitioner could not have filed a suit in court because the statute required, as a condition precedent, that the claim be filed with the Veterans' Administration and be denied; this she could not have done successfully for lack of proof of serviceman's death, or of the period necessary for presumption of death upon seven years of unexplained absence (38 U.S.C. §108). Neither were the competent witnesses to serviceman's demise, behind the enemy's concentration camps, available. In so holding, the lower court computed the six year limitation period from the date which the affidavits of the servimeman's comrades stated as the date of death of serviceman, ignoring the fact that the respondent has failed in its statutory duty to notify Petitioner or next of kin of serviceman's death, and further ignoring conditions in the Philippines, which is of historical record, during the hostilities, and which is expressly recognized by Congress as creating such a "disability" that it extended the filling of claims with the Veterans' Administration to seven years. The holding of the lower court is in conflict with the view of this Court and utterly disregarded good common sense. It annulled Congress' expressed "sympathetic consideration of the plight of such persons," as Petitioner's.

The lower court further adopted the view that Congress continues to offer the "loaf" (insurance benefits) but did not see fit to extend the time for court action in the event the administrative body did not think claimant entitled to

it. The import of the lower court's construction of the statute seems, we feel, reminiscent of the Japanese practice of generosity during the war (in historical accounts and pictures within judicial notice), in which the Japanese, then masters of the situation, held out the "loaf" (bowl of rice, fish, or smokes) to famished American prisoners behind barriers of barbed wires or bayonets, knowing they would not dared cross the barriers, and to toss the "loaf" on the ground to the prisoners and then, when hands strained to reach the "loaf," crushed it under heel.

Congress extended, with the best of intentions filing claims for the "loaf" to seven years, but the lower court held it did not do away with the bar of the six year period of bringing action, which shall be necessary for claimants to reach the "loaf." This Court must need settle the question raised by the congressional amendment and to set the proper legal and moral interpretation of Congress' expressed purpose "to assist persons in the position of the appellant" Petitioner.

WHEREFORE, it is respectfully submitted that, this petition for writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit should be granted.

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APPENDIX

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GERMANA E. PRADO DEL CASTILLO,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

No. 16,345
Nov. 19, 1959

Appeal from the United States District Court for the District of Arizona.

Before: ORR, POPE and JERTBERG, Circuit Judges.

ORR, Circuit Judge:

Appellant filed a claim with the Veterans' Administration on June 11, 1948 claiming to be the beneficiary of gratuitous life insurance deemed to have been issued pursuant to the National Service Life Insurance Act of 1940[1] to a serviceman killed in action in the Philippines on April 3, 1942. Appellant's claim is based upon her contention that she was the last person to stand in loco parentis to the deceased serviceman. She was first notified that her claim had been denied on July 31, 1956. The reason

[1] c.757, §602(d)(3)(B), 54 Stat. 1014, as amended by Act July 11, 1942, c.504, §1, 56 Stat. 657 [formerly 38 U.S.C. §802(d)(3)(B)], which states as follows: "Any person in the active service who on or after December 7, 1941, and prior to April 20, 1942, has been . . . besieged . . . by forces of an enemy of the United States . . . and at the time of such . . . seige . . . did not have in force insurance in the aggregate amount of at least $5,000 . . . shall be deemed to have applied for and been granted . . . National Service Life Insurance . . ."

In Act September 2, 1958, 72 Stat. 1105, enacted as 38 U.S.C., "Veterans' Benefits", Congress consolidated and revised all existing laws administered by the Veterans' Administration and omitted §602(d) [formerly 38 U.S.C. §802(d)] from the National Service Life Insurance Act. This does not, of course, deprive appellant of any rights she may have had under the Act before the omission.

given was that she did not fall within the restricted class of beneficiaries of National Service Life Insurance. Appellant appealed to the Administrator of Veterans' Affairs on June 18, 1957, which appeal was dismissed without consideration on January 8, 1958. On February 24, 1958 appellant filed suit in the district court. That court dismissed the action on the grounds that it was without jurisdiction because the six year period of limitations on actions on National Service Life Insurance claims had expired before the commencement of the action, the time having expired before the claim was filed with the Veterans' Administration.[2]

The provision of the National Service Life Insurance Act under which appellant made her claim limits the time within which such claims may be made before the Veterans' Administration to seven years from the date the insured serviceman dies.[3] Appellant

[2] "(a) In the event of disagreement as to a claim . . . under a contract of National Service Life Insurance . . . between the Veterans' Administration and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the United States District Court for the District of Columbia or in the district court of the United States in and for the district in which such person or any of them resides, and jurisdiction is conferred upon such courts to hear and determine all such controversies.

(b) No suit on . . . National Service Life Insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made. For the purposes of this section, it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded. The limitation of six years is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim: **provided**, That in any case in which a claim is timely filed the claimant shall have not less than ninety days from the date of mailing notice of denial within which to file suit . . . Infants, insane persons, or persons under other legal disabilities . . . shall have three years in which to bring suit after removal of their disabilities." 38 U.S.C. §784 (formerly 38 U.S.C. §445, §817).

[3] ". . . No application for insurance payments under subsections (d)(2) or (d)(3) of this section shall be valid unless filed within seven years after the death of the insured . . ." National Service Life Insurance Act of 1940, c.757, §602(d)(5), as amended 54 Stat. 1014 [formerly 38 U.S.C. §802(d)(5)].

§602(d)(5) was added to the Act in 1942 and then provided for a one year period of limitations. Act July 11, 1942, c.504, §2, 56 Stat. 657. The period was then extended to five years in 1944 (Act September 30,

argues that when Congress in 1948 extended the time in which claims could be made before the Veterans' Administration from five to seven years, by implication it also extended the statute of limitations on suits in the district courts contesting the denial of such a claim from six to seven years since Congress must have intended the two to be coextensive. Otherwise, appellant asserts, the extension of time to file claims granted by Congress would amount to ". . . giving a loaf of gratuitous bread with one hand and taking it away from the mouth with the other." This is not correct. Congress continues to offer the "loaf" but did not see fit to extend the time for court action in the event the administrative body did not think the claimant entitled to it.

The six year statute of limitations on actions in the district courts on insurance claims applies generally to all government insurance. When National Service Life Insurance was created by the Act of 1940, this six year statute of limitations was adopted by reference to govern actions on insurance policies under the Act. Act of 1940, c. 757, §617, 54 Stat. 1014 (formerly 38 U.S.C. §817). When the gratuitous life insurance provision under which appellant made her claim was added to the Act in 1942, the time for making claims with the Veterans' Administration on such insurance was limited to one year after the death of the insured. Although this was later extended from one to five years in 1944 and then from five to seven years in 1948 (see footnote 3 supra), the time limitation on suits in the district courts on such claims remained at six years and at no time has it been coextensive with the period of time in which claims could be filed with the Veterans' Administration. The purpose of Congress in extending the time for filing claims was to assist persons in the position of appellant who had been residents of the Philippines during World War II and thus prevented from filing claims for National Service Life Insurance payments because of the Japanese occupation of the islands. See Senate Report No. 902, 1948 U.S.Code Cong. Serv. 1121. Their situation was considered by committees of both houses of Congress and the Veterans' Administration and their reports disclose a sympathetic consideration of the plight of such

1944, c. 454, §4, 58 Stat. 762) and finally to seven years in 1948 (Act March 3, 1948, c. 90, 62 Stat. 59). The limitation was omitted with the rest of §602(d) in the Act September 2, 1958 (see footnote 1 supra).

persons. The sole relief recommended, however, was an extension of the time to file claims with the Administration. The time limitation in which to invoke the jurisdiction of the district courts to review denial of claims by the administrative body was not extended.

There is no invalidity in the Act extending the administrative remedy under the National Service Life Insurance Act to seven years due to its failure to also extend the jurisdiction of the district courts so as to provide judicial review of administrative decisions during the full seven years. "The United States, when it creates rights against itself, is under no obligation to provide a remedy through the courts. It may limit the individual to administrative remedies." Lynch v. U.S., 292 U.S. 571, 582 (1934). Congress has often passed legislation creating gratuitous benefits for a limited class of persons whose remedy on denial of benefits was exclusively an administrative one. See, for instance, The Federal Compensation Act, 5 U.S.C. §793. "The federal employees' allowances are grants by the Congress, and the agents of the Congress have power to determine the recipients of such grants. If Congress chose to preclude judicial review of the selection of the objects of its bounty, it could do so." Calderon v. Tobin, 187 F.2d 514, 516 (D.C.Cir. 1951), Cert.Den. 341 U.S. 935, Rehearing Den. 342 U.S. 843. See also Van Horne v. Hines, 122 F.2d 207 (D.C.Cir. 1941). Congress has provided claimants under government insurance contracts with redress to the courts upon administrative denial of their claims. However, waivers of sovereign immunity from suit are to be strictly construed. U.S. v. Sherwood, 312 U.S. 584 (1941). This we must do in the instant case. The privilege to sue the United States on insurance claims is limited to six years from the date of the death of the insured by the express language of the act. The decision of the Administrator is declared to be final in all other cases. 38 U.S.C. §211, §785. We cannot in the face of this express language hold that Congress, in extending the administrative remedy to seven years, by implication extended the jurisdiction of the courts over actions on such insurance claims to seven years. We note that at the present time no limitation on filing claims with the Veterans' Administration under National Service Life Insurance exists. Yet judicial review remains limited to six years after the death of the insured.

Appellant also contends that her residence in the Philippines during the hostilities and Japanese occupation of the islands in World War II was a legal disability which tolled the running of the statute. The Supreme Court of the United States in the case of Soriano v. U.S., 352 U.S. 270 (1957) in dealing with this question said:

> ". . . Congress was entitled to assume that the limitation period it prescribed meant just that period and no more. With this intent in mind, Congress has passed specific legislation each time it has seen fit to toll the statute of limitations because of war. And this court has long decided that limitations and conditions upon which the government consents to be sued must be strictly observed and exceptions thereto are not to be implied." (at p. 276)

Congress, as heretofore pointed out, specifically reconsidered the plight of persons in appellant's position and yet only extended the administrative remedy without tolling the period of limitations on judicial review.

Another contention made here is that under the decision of the Supreme Court of the United States in Peak v. U.S., 353 U.S. 43 (1957), appellant's cause of action accrued for purposes of the statute of limitations when appellant learned of the death of the insured and not at the date of his death. The decision in that case is expressly limited, however, to a situation where the statutory presumption of death after seven years of unexplained absence (38 U.S.C. 108) is relied upon, and has no application where, as here, the date of death is established without reliance upon the presumption.

The trial court having correctly determined that it had no jurisdiction to hear and determine the action, its denial of appellant's motion for summary judgment was proper.

JUDGMENT AFFIRMED

(Endorsed: Opinion. Filed Nov. 19, 1959.

Paul P. O'Brien, Clerk.

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In the Supreme Court of the United States

OCTOBER TERM, 1959

GERMANA E. PRADO DEL CASTILLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

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No. 638

GERMANA E. PRADO DEL CASTILLO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The United States District Court for the District of Arizona did not write an opinion. The opinion of the Court of Appeals for the Ninth Circuit (Pet. App. 1-5) is reported at 272 F. 2d 326.

JURISDICTION

The judgment of the Court of Appeals was entered on November 19, 1959 (R. 36). The petition for a writ of certiorari was filed on January 9, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the petitioner's action for benefits under National Service Life Insurance was barred by the statute of limitations because it was filed more than six years after the date of the death of the insured.

STATUTES INVOLVED

The limitation provision of the National Service Life Insurance Act of 1940, Sec. 617, 54 Stat. 1008, 1014, as amended, 38 U.S.C. (1952 ed.) 817, provides:

> In the event of disagreement as to any claim arising under this subchapter, suit may be brought in the same manner and subject to the same conditions and limitations as are applicable to the United States Government life (converted) insurance under the provisions of sections 445 and 551 of this title.

38 U.S.C. (1952 ed.) 445 provides in relevant part:

> * * * * * *
>
> [N]o suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs. Infants, insane persons, or persons under other legal disability, or persons rated as incompetent or insane by the Veterans' Administration shall have three years in which to bring suit after the removal of their disabilities. * * *
>
> * * * * *

STATEMENT

The petitioner filed a claim with the Manila office of the Veterans' Administration on June 11, 1948, for the proceeds of a gratuitous[1] life insurance policy deemed to have been issued pursuant to Section 602 (d)(3) of the National Service Life Insurance Act of 1940 to a serviceman who was killed in action in the Philippines on April 3, 1942 (R. 51). The petitioner claimed the proceeds as the last person to stand in *loco parentis* to the deceased serviceman (R. 51). Her claim was denied by the Veterans' Administration on March 21, 1950, for the reason that petitioner had not, in fact, stood in a *loco parentis* relationship to the insured (R. 21). However, the petitioner did not receive notice of this denial until July 31, 1956 (R. 6). The petitioner appealed from this decision to the Administrator of Veterans' Affairs, and her appeal was dismissed on January 8, 1958 (R. 52). The petitioner thereupon instituted this action in the district court on February 24, 1958 (R. 52).

The district court dismissed the petitioner's action on the ground that the six-year statute of limitations on actions on National Service Life Insurance claims had expired prior to the commencement of her suit (R. 52). On appeal, the Court of Appeals for the Ninth Circuit affirmed. (Pet. App. 1-5). The court agreed with the district court that the petitioner's action was barred by the statute of limitations.[2] The

[1] During the early portion of World War II, policies were deemed to be issued to servicemen who were not in circumstances where they could make application for insurance.

[2] 38 U.S.C. (1952 ed.) 445, 817, *supra*, p. 2. Under the statute, the filing of a claim with the Veterans' Administration prior to

court also rejected the petitioner's contentions that: (1) the Act of March 3, 1948, c. 90, 62 Stat. 59, amending the period of limitations on filing an administrative claim for gratuitous insurance benefits under Section 602(d)(5) of the National Service Life Insurance Act of 1940, constituted an implied amendment of Section 617 (now 38 U.S.C. 784), involving the period of limitation on court review; and (2) that the petitioner's residence in the Philippines during World War II was a legal disability which tolled the running of the statute.

ARGUMENT

The decisions of both courts below properly applied the statutory period of limitations enacted as a part of the National Service Life Insurance Act. There is no conflict in decisions and no reason for further review of the decisions below.

1. The district court and the court of appeals correctly held that the petitioner's action was barred by the statute of limitations. 38 U.S.C. (1952 ed.) 445, 817[3] (now 38 U.S.C. 784(b)) provide that no suit on National Service Life Insurance shall be allowed "unless the same shall have been brought within six years after the right accrued for which the claim is made: *Provided*, That for the purposes of this section

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the end of the statutory six-year period would toll the running of the six-year period. Here, however, her administrative claim was filed in June, 1948, or more than six years after the insured's death (R. 52).

[3] In the 1952 edition of the Code, the statute of limitations for Government life insurance (38 U.S.C. 445) was incorporated by reference into the National Service Life Insurance Act (38 U.S.C. 817). See *supra*, p. 2.

it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the Veterans' Administration of the claim sued upon and the denial of said claim by the Administrator of Veterans' Affairs." Thus, the petitioner's right accrued on April 3, 1942 (the date of the insured's death) and her claim was not filed with the Veterans' Administration until June 11, 1948, more than six years later. Consequently, the petitioner was barred from seeking judicial review at the time that she filed her administrative claim.

2. The petitioner reasserts here (Pet. 5-6) that the congressional action in 1948, extending the period of limitation for filing administrative claims for gratuitous insurance benefits from five to seven years,[1] impliedly extended the period of limitations on court actions from six to seven years because Congress would not have intended to grant an administrative remedy without a judicial review.

However, amendments or repeals by implication are not favored. *E.g., United States* v. *Borden Company*, 308 U.S. 188. And an earlier statute should not be deemed amended or repealed by implication by a later act unless the two are so manifestly inconsistent with

[1] The gratuitous insurance benefits, as originally enacted, contained a one-year period of limitation on administrative claims (Act of July 11, 1942, c. 504, 56 Stat. 657). This period was extended to five years in 1944 (Act of September 30, 1944, c. 454, 58 Stat. 762) and finally to seven years in 1948 (Act of March 3, 1948, c. 90, 62 Stat. 59).

one another that they cannot be reasonably reconciled. Cf. *United States* v. *Rollnick*, 91 F. 2d 911, 918 (C.A. 2); *Sims* v. *Rives*, 84 F. 2d 871 (C.A.D.C.), certiorari denied, 298 U.S. 682. With regard to the question here involved, there is no inconsistency in the Government's granting an administrative remedy without providing for judicial review. As this Court stated in *Lynch* v. *United States*, 292 U.S. 571, 582:

> * * * When the United States creates rights in individuals against itself, it is under no obligation to provide a remedy through the courts. *United States* v. *Babcock*, 250 U.S. 328, 331. It may limit the individual to administrative remedies. *Tutum* v. *United States*, 270 U.S. 568, 576. * *.*

See also *Calderon* v. *Tobin*, 187 F. 2d 514, 516 (C.A.D.C.), certiorari denied, 341 U.S. 935. Accordingly, Congress has often passed legislation granting benefits to a restricted class of persons but providing them only with an administrative review of a denial of those benefits. See *e.g.*, the Federal Compensation Act (5 U.S.C. 751, *et seq.*); *Van Horne* v. *Hines*, 122 F.2d 207 (C.A.D.C.), certiorari denied, 314 U.S. 689; *Sinlao* v. *United States*, 271 F. 2d 846 (C.A.D.C.).

Moreover, the two statutes involved *i.e.*, 38 U.S.C. (1952 ed.) 802(d)(5) and 38 U.S.C. (1952 ed.) 445 have always been entirely separate from each other and have never provided the same period of limitation. Section 445 provides a six-year limitation on actions on *both* National Service Life Insurance and United States

Government life insurance. In contrast, Section 802(d)(5) applied only to a limited portion of the National Service Life Insurance Act, *viz*, the gratuitous insurance benefits for servicemen who could not make regular applications for insurance, and, at various times, provided periods of limitation of one year, five years and finally seven years. See n. 4, *supra*, p. 5. Since a waiver of sovereign immunity from suit must be strictly construed (*United States* v. *Sherwood*, 312 U.S. 584, 590) and the Act in question referred only to an extension of the period of limitation for filing administrative claims, its scope should not be expanded beyond the plain language of the Act itself.

3. The petitioner's contention (Pet. 7-8) that her action was timely because she was under a legal disability during the Japanese hostilities is equally without merit. Section 445, *supra*, pp. 2-3, requires that persons under a legal disability "shall have three years in which to bring suit after the removal of their disabilities." The petitioner's disability, if any,[6] was removed on the termination of hostilities with Japan, and her action, therefore, was required to have been

[5] Section 445, providing a limitation on actions on Government life insurance, was incorporated by reference into the National Service Life Insurance Act. See n. 3, *supra*, p. 4. United States Government life insurance is insurance issued to service men under the law as it stood prior to World War II.

[6] See *Soriano* v. *United States*, 352 U.S. 270, 276, in which this Court observed that when Congress wished a statute of limitations to be tolled during a period of war, it passed specific legislation to that effect. The necessary inference from the *Soriano* decision is that residents of the Philippines were not under a legal disability during World War II.

brought no later than September 2, 1948, *i.e.*, three years after the termination of hostilities. *Soriano* v. *United States*, 352 U.S. 270, 276; *De Yaranon* v. *United States*, 152 F. Supp. 644, 645 (D. D.C.). The petitioner's action was not brought until February 24, 1958, which was more than nine years after her time had expired under the legal disability provision.[7]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

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[7] According to the terms of 38 U.S.C. (1952 ed.) 445, although the timely filing of a claim with the Veterans' Administration tolls the six-year limitation period, such a filing does not toll the three-year disability provision. The right of action should not be considered to accrue only after the administrative remedies have been exhausted, because the statute by its terms deems the right to accrue "on the happening of the contingency on which the claim is founded." Compare *Soriano* v. *United States*, 352 U.S. 270, 274-275.

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